

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

Larry & Linda Wellendorf,

Petitioners-Appellants,

V.

Polk County Board of Review,

Respondent-Appellee.

ORDER

Docket No. 09-77-1352
Parcel No. 181/00211-819-516

On October 6, 2010, the above captioned appeal came on for consideration before the Iowa Property Assessment Appeal Board. The appeal was conducted under Iowa Code section 441.37A(2)(a-b) and Iowa Administrative Code rules 701-71.21(1) et al. The Appellants, Larry and Linda Wellendorf were self-represented, submitted evidence in support of their petition, and requested the appeal proceed without a hearing. The Polk County Board of Review designated Assistant County Attorneys David Hibbard and Ralph Marasco as its legal representatives. The Appeal Board having reviewed the entire record and being fully advised, finds:

Findings of Fact

Larry and Linda Wellendorf are the owners of a residentially classified property located at 1010 NW Waterfront Drive, Ankeny, Iowa. The property consists of a 3384 square-foot site improved with a one story, attached townhouse built in 2004, having 1525 total square feet of living area, and 1150 square-feet of living quality basement finish. Additional features include a three-car attached garage, and a rear deck. The property has a January 1, 2009, assessment of \$266,400, representing \$43,300 in land value and \$223,100 in improvement value.

The Wellendorfs protested to the Polk County Board of Review regarding the 2009 assessment for this parcel. The protest was based on the following grounds: 1) The assessment is not equitable as

compared with the assessments of other like property in the taxing district under Iowa Code section 441.37(1)(a); and 2) The property is assessed for more than the value authorized by law under section 441.37(1)(b), stating that the property had a total value of \$250,400; and 3) that there is an error in the assessment under section 441.37(1)(c), however a specific error was not identified; and 4) There has been a downward change in the value since the last assessment under sections 441.37(1) and 441.35(3). The Board of Review denied the protest.

The Wellendorfs then appealed to this Board, reasserting all of their original claims. In a re-assessment year, a challenge based on downward change in value is akin to a market value claim. *See Dedham Co-op. Ass'n v. Carroll County Bd. of Review*, 2006 WL 1750300 (Iowa Ct. App. 2006). Accordingly, we do not consider downward change as a separate claim and consider only the claim of over-assessment. While the Wellendorf's did not check the box asserting a market value claim, it is clear in their plain language statement, as well as their claim of downward change, this claim was asserted. While the Wellendorfs also reasserted their claim of error, they again failed to identify a specific error. It appears their claim of error is that their property is over-assessed. Therefore, we will only consider the following grounds, inequitably assessed and assessed for more than authorized by law.

The Wellendorfs submitted four properties as equity comparables providing the parcel number, address, and assessed value. The properties are located at 901, 1002, 1020 NW Waterfront Drive and 1012 NW Irvinedale Drive. In an attachment to the petition, the Wellendorf's outline similarities of these properties to their property. They indicate all four have sold within the last 11 months, all are townhomes with finished walk-out basements, all were built by the same builder with similar construction and interior quality/amenities, and all back up to ponds or a wooded creek with the exception of the property located at 1002 NW Waterfront Drive. 1020 NW Waterfront Drive has a

two-car garage and 1002 has a four-car garage compared to the subject's three-car garage. The Wellendorfs also note their home backs to other improved properties and not water.

While the Wellendorfs did not supply the sales prices or sales dates of these four properties, this information is within the certified record submitted by the Board of Review. PAAB considers all evidence in the record and examines the record as a whole to make findings of fact and conclusions of law. Iowa Code § 441.37A(3)(a). It makes no difference who enters the evidence in an administrative proceeding. *Hy-Vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005).

Three of the four equity comparables have recent sales prices which are less than their January 1, 2009, assessments. The Wellendorfs indicate the average per-square-foot sales price of the like properties is \$163.58. They then apply this average to their total living area of 1525 square feet indicating a value of \$249,460.

Lastly, the Wellendorfs assert the average assessed value of the four properties submitted as equity comparables is \$251,350. It appears they took the average of their \$249,460 indication by sales and the \$251,350 average assessed value to reach what they believe to be the correct market value of the subject property, \$250,400.

The Wellendorfs also offered four recent sales of properties they consider comparable to the subject. Three of these properties sold in June and September 2010 and one sold in October 2009. All four are significantly after the January 1, 2009, assessment date and as such we give them no consideration because they do not accurately reflect the January 1, 2009, fair market value of the subject.

The Wellendorfs also delivered two packets to this Board, after the October 6, 2010, hearing date. The first packet is dated October 14, 2010, and the second packet is dated October 16, 2010. Neither will be considered due to being offered after the hearing date.

The Polk County Board of Review submitted an appraisal of the subject property completed by Cris Swaim of Swaim Appraisal Services. Swaim's appraisal has an effective date of January 1, 2009. He compared five properties to the subject. Three of the properties sold prior to the January 1, 2009, assessment date, and two sold in February and May 2009, after the assessment date; however they were both listed as of January 1, 2009.

The unadjusted sales price of the five properties range from \$237,500 to \$315,000. After adjustments, the properties indicate a sales price range of \$226,300 to \$303,100. Swaim indicates the two comparables at the upper end of the range appear to be anomalies in the market, as they are not consistent with other similar sales and are far above the median sales prices for this specific market. However, he does not believe they can be ignored and are considered comparable. Swaim does additional research, considering comparable sales within the last twelve months of the inspection date of the appraisal, September 10, 2010. He notes 11 listings and 12 sales occurred with a median sales price of \$244,950. He considers this data to be consistent with the previous research indicating a steady decrease in both sales activity and sales prices for the subject market. His final opinion of value for the subject property, based upon the foregoing, is \$250,000.

The Wellendorfs' analysis of sales and assessed values is minimal and not entirely documented. While it is given only limited consideration, the information does support the same conclusions reached by Swaim. We give most consideration to Swaim's appraisal as it demonstrates an opinion as of January 1, 2009, and has more documentation of the comparable properties. Based upon the foregoing, the Appeal Board finds there is sufficient evidence to support the claims that the subject property is inequitably assessed and assessed for more than market value.

Conclusions of Law

The Appeal Board applied the following law.

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2009). This Board is an agency and the provisions of the Administrative Procedure Act apply to it. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determines anew all questions arising before the Board of Review related to the liability of the property to assessment or the assessed amount. § 441.37A(3)(a). The Appeal Board considers only those grounds presented to or considered by the Board of Review. § 441.37A(1)(b). But new or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption that the assessed value is correct. § 441.37A(3)(a).

In Iowa, property is to be valued at its actual value. Iowa Code § 441.21(1)(a). Actual value is the property's fair and reasonable market value. *Id.* "Market value" essentially is defined as the value established in an arm's-length sale of the property. § 441.21(1)(b). Sale prices of the property or comparable properties in normal transactions are also to be considered in arriving at market value. *Id.* If sales are not available, "other factors" may be considered in arriving at market value. § 441.21(2). The assessed value of the property "shall be one hundred percent of its actual value." § 441.21(1)(a).

To prove inequity, a taxpayer may show that an assessor did not apply an assessing method uniformly to similarly situated or comparable properties. *Eagle Food Centers v. Bd. of Review of the City of Davenport*, 497 N.W.2d 860, 865 (Iowa 1993). Alternatively, a taxpayer may show the property is assessed higher proportionately than other like property using criteria set forth in *Maxwell v. Shriver*, 257 Iowa 575, 133 N.W.2d 709 (1965). The Swaim appraisal indicates the property is over-assessed.


In an appeal that alleges the property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(b), there must be evidence that the assessment is excessive and the correct value of the property. *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277 (Iowa 1995). While the Wellendorfs provided some properties for comparison, the information on each property was limited and no direct comparison with adjustments was made. The Polk County Board of Review provided an appraisal completed by Cris Swaim, which includes detailed comparable properties with adjustments, concluding a market value of \$250,000. We give most consideration to the Swaim appraisal.

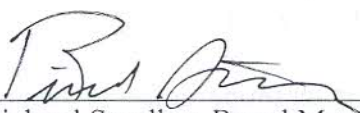
We find the evidence supports the claims brought before this Board. We, therefore, modify the assessment of the subject property located at 1010 NW Waterfront Drive, Ankeny, Iowa, as determined by the Polk County Board of Review as of January 1, 2009.

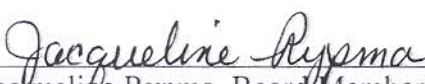
THE APPEAL BOARD ORDERS that the Wellendorf property, located at 1010 NW Waterfront Drive, Ankeny, Iowa, assessment be modified to a total value of \$250,000; representing \$43,300 in land value and \$206,700 to the improvements as of January 1, 2009.

The Secretary of the State of Iowa Property Assessment Appeal Board shall mail a copy of this Order to the Polk County Auditor and all tax records, assessment books and other records pertaining to the assessments referenced herein on the subject parcels shall be corrected accordingly.

Dated this 27 day of October 2010


Karen Oberman, Presiding Officer


Richard Stradley, Board Member


Jacqueline Rypma, Board Member

cc:

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| Certificate of Service | |
| The undersigned certifies that the foregoing instrument was served upon all parties to the above cause & to each of the attorney(s) of record herein at their respective addresses disclosed on the pleadings on <u>10-27</u> , 2010 | |
| By: | <input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> FAX |
| | <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Courier |
| | <input type="checkbox"/> Certified Mail <input type="checkbox"/> Other |
| Signature |  |